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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/056,227	01/23/2002	Francis M. Creighton IV	5236-000300	6917

7590 12/12/2003  
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EXAMINER

DONOVAN, LINCOLN D

ART UNIT	PAPER NUMBER
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2832

DATE MAILED: 12/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

### Application No.

10/056,227

### Applicant(s)

CREIGHTON, FRANCIS M.

### Examiner

Lincoln Donovan

### Art Unit

2832

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 8-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election with traverse of the restriction in the response filed is acknowledged. The traversal is on the ground(s) that 08-22-03. This is not found persuasive because applicant claims specific magnet structure is classified in a different art area necessitating further search and/or consideration.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: in line 4, "arch" should be corrected as --- arc ---. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, applicant should clarify the structure intended to have the plurality of segments have a magnetization direction to optimize the magnetic field in a selected direction at an operating point in front of the assembly and so that the pivoting of the magnet about the axis behind the magnet. It is not clear what is intended by "so

that the pivoting of the magnet about the axis behind the magnet through an 'arch' of less than 90° causes the magnetic field direction of the operating point to vary by 180°."

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, as best understood in view of the rejections under 35 U.S.C. 112, second paragraph, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritter et al. [US 6,241,671] in view of Katznelson et al. [US 6,157,281].

Ritter et al. discloses a magnet assembly [figure 2] comprising at least one magnet [68, 70] pivotally mounted on a support frame movable about an axis separated from the at least one magnet about an arc.

Ritter et al. disclose the instant claimed invention except for the at least one magnet being segmented and the pivot point being behind the magnet assembly.

Zatznelson et al. discloses a movably mounted permanent segmented magnet assembly used in medical applications with an axis of movement being behind the magnet.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the segmented design of Zatznelson et al. for the at least one magnet of Ritter et al., for the purpose of providing increased magnetic field control.

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To provide the pivot mount axis behind the at least one magnet of Ritter et al. would have been obvious in order to facilitate patient access, as suggested by Zatznelson et al.

The specific operating strength and distance from the region of interest would have been obvious design considerations based on the specific application of the device.

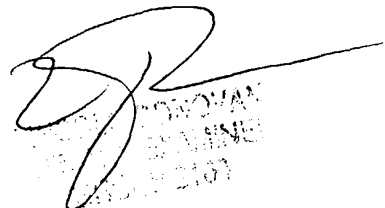
### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Blume et al. [US 6,304,768] and Zhang et al. [US 5,667,469].

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lincoln Donovan whose telephone number is 703 308-3111. The examiner can normally be reached on M-F 8:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7724.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1920.

A handwritten signature in black ink, appearing to be 'L. Donovan', with a long horizontal line extending to the right. Below the signature is a faint, rectangular stamp containing the text 'DONOVAN', 'RECEIVED', and '11/29/03'.

ldd  
11/29/03